

MTA Sample Medical Marihuana Facilities Ordinance

(To "Opt In" and allow one or more types of medical marijuana facilities)

TOWNSHIP OF _____
COUNTY OF _____, STATE OF MICHIGAN

ORDINANCE NO. _____
ADOPTED: _____
EFFECTIVE: _____

MEDICAL MARIHUANA FACILITIES ORDINANCE

An ordinance to provide a title for the ordinance; to define words; to authorize the operation of and provide regulations for medical marihuana facilities in _____ Township pursuant to Public Act 281 of 2016, as may be amended; to provide for an annual fee; to provide penalties for violation of this ordinance; to provide for severability; to repeal all ordinances or parts of ordinances in conflict therewith and to provide an effective date.

THE TOWNSHIP OF _____
_____ COUNTY, MICHIGAN

ORDAINS:

SECTION I TITLE

This ordinance shall be known as and may be cited as the _____ Township Medical Marihuana Facilities Ordinance.

SECTION II DEFINITIONS

Words used herein shall have the definitions as provided for in PA 281 of 2016, as may be amended.

SECTION III AUTHORIZED MEDICAL MARIHUANA FACILITIES

[Note: A township is not required to state a specific number of authorizations for a type of facility. A township may choose to authorize an unlimited number of a type of facility. For example, "An unlimited number of grower(s) shall be authorized..."]

1. The following medical marihuana facilities may be authorized to operate within the Township by the holder of a state operating license, subject to compliance with PA 281 of 2016, as may be amended, the Rules promulgated thereunder and this ordinance:

a) Not more than _____ grower(s) shall be authorized in the Township, which number shall include all of the following Class A, Class B and Class C growers authorized in the Township:

1. Not more than _____ Class A growers (500 marihuana plants) may be authorized in the Township.
2. Not more than _____ Class B growers (1,000 marihuana plants) may be authorized in the Township.
3. Not more than _____ Class C growers (1,500 marihuana plants) may be authorized in the Township.

b) Not more than _____ processor(s) shall be authorized in the Township.

- c) Not more than _____ provisioning center(s) shall be authorized in the Township.
- d) Not more than _____ safety compliance facility(ies) shall be authorized in the Township.
- e) Not more than _____ secure transporter(s) shall be authorized in the Township.

2. On and after _____, the Township shall accept applications for authorization to operate a medical marihuana facility within the Township. Application shall be made on a Township form and must be submitted to the Township Clerk and/or other designee of the Township Board (hereinafter referred to as "Clerk"). Once the Clerk receives a complete application including the initial annual medical marihuana facility fee, the application shall be time and date stamped. Complete applications shall be considered for authorization in consecutive time and date stamped order. Upon consideration, if the facility type authorization is available within the number specified above, then the applicant shall receive conditional authorization to operate such medical marihuana facility within the Township. Once the limit on the number of an authorized facility is conditionally reached, then any additional complete applications shall be held in consecutive time and date stamped order for future conditional authorization. Any applicant waiting for future conditional authorization may withdraw their submission by written notice to the Clerk at any time and receive refund of the initial annual medical marihuana fee submitted.

3. Within thirty days from conditional authorization from the Township or from December 15, 2017, whichever is later, the conditionally authorized applicant must submit proof to the Clerk that the applicant has applied for prequalification from the state for a state operating license or has submitted full application for such license. If the applicant fails to submit such proof, then such conditional authorization shall be canceled by the Clerk and the conditional authorization shall be available to the next applicant in consecutive time and date stamped order as provided for in Section III (2) herein.

4. If a conditionally authorized applicant is denied prequalification for a state operating license or is denied on full application for a state operating license, then such conditional authorization will be canceled by the Clerk and the conditional authorization shall be available to the next applicant in consecutive time and date stamped order as provided for in Section III (2) herein.

5. A conditionally authorized applicant shall receive full authorization from the Township to operate the medical marihuana facility within the Township upon the applicant providing to the Clerk proof that the applicant has received a state operating license for the medical marihuana facility in the Township and the applicant has met all other requirements of this ordinance for operation including but not limited to any zoning approval for the location of the facility within the Township.

6. If a conditionally authorized applicant fails to obtain full authorization from the Township within one year from the date of conditional authorization, then such conditional authorization shall be canceled by the Clerk and the conditional authorization shall be available to the next applicant in consecutive time and date stamped order as provided for in Section III (2) herein. The Township Board shall have authority to extend the deadline to obtain full authorization for up to an additional six months on written request of the applicant, within thirty days prior to cancellation, upon the reasonable discretion of the Township Board finding good cause for the extension.

SECTION IV
GENERAL REGULATIONS REGARDING
AUTHORIZED MEDICAL MARIHUANA FACILITIES

1. An authorized medical marihuana facility shall only be operated within the Township by the holder of a state operating license issued pursuant to PA 281 of 2016, as may be amended, and the Rules promulgated thereunder. The facility shall only be operated as long as the state operating license remains in effect.

2. Prior to operating an authorized medical marihuana facility within the Township pursuant to a state operating license, the facility must comply with all Township zoning ordinance regulations. The facility shall only be operated as long as it remains in compliance with all Township zoning ordinance regulations.

3. Prior to operating an authorized medical marihuana facility within the Township pursuant to a state operating license, the facility must comply with all Township construction and building ordinances, all other Township ordinances specifically regulating medical marihuana facilities, and generally applicable Township police power ordinances. The facility shall only be operated as long as it remains in compliance with all such ordinances now in force or which hereinafter may be established or amended.
4. An authorized medical marihuana facility shall consent to inspection of the facility by Township officials and/or by the County Sheriff's Department, upon reasonable notice, to verify compliance with this ordinance.
5. If at any time an authorized medical marihuana facility violates this ordinance the Township Board may request that the state revoke or refrain from renewing the facility's state operating license. Once such state operating license is revoked or fails to be renewed, the Clerk shall cancel the Township authorization and the authorization shall be available to the next applicant in consecutive time and date stamped order as provided for in Section III (2) herein.
6. It is hereby expressly declared that nothing in this ordinance be held or construed to give or grant to any authorized medical marihuana facility a vested right, license, privilege or permit to continued authorization from the Township for operations within the Township.
7. The Township expressly reserves the right to amend or repeal this ordinance in any way including but not limited to complete elimination of or reduction in the type and/or number of authorized medical marihuana facilities authorized to operate within the Township.

SECTION V
ANNUAL MEDICAL MARIHUANA FACILITY FEE

There is hereby established an annual nonrefundable Township medical marihuana facility fee in the amount of \$ _____ (up to \$5,000), for each authorized medical marihuana facility within the Township, to help defray administrative and enforcement costs associated therewith. An initial annual medical marihuana facility fee of \$ _____ (up to \$5,000) shall be payable at the time of application for Township authorization and thereafter the same amount shall be payable each year by the anniversary of the date of full Township authorization to operate the medical marihuana facility.

SECTION VI
VIOLATIONS AND PENALTIES

1. Any person who disobeys, neglects or refuses to comply with any provision of this ordinance or who causes, allows or consents to any of the same shall be deemed to be responsible for the violation of this ordinance. A violation of this ordinance is deemed to be a nuisance per se.
2. A violation of this ordinance is a municipal civil infraction, for which the fines shall not be less than \$100 nor more than \$500 for the first offense and not less than \$250 nor more than \$1,000 for subsequent offenses, in the discretion of the Court. For purposes of this section, "subsequent offenses" means a violation of the provisions of this ordinance committed by the same person within 12 months of a previous violation of the same provision of this ordinance for which said person admitted responsibility or was adjudicated to be responsible. The foregoing sanctions shall be in addition to the rights of the Township to proceed at law or equity with other appropriate and proper remedies. Additionally, the violator shall pay costs which may include all expenses, direct and indirect, which the Township incurs in connection with the municipal civil infraction.
3. Each day during which any violation continues shall be deemed a separate offense.
4. In addition, the Township may seek injunctive relief against persons alleged to be in violation of this ordinance, and such other relief as may be provided by law.
5. This ordinance shall be administered and enforced by the Ordinance Enforcement Officer of the Township or by such other person (s) as designated by the Township Board from time to time.

SECTION VII
SEVERABILITY

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect. The provisions herein shall be construed as not interfering or conflicting with the statutory regulations for licensing medical marihuana facilities pursuant to PA 281 of 2016, as may be amended.

SECTION VIII
REPEAL

All ordinance or parts of ordinances in conflict herewith are hereby repealed.

SECTION IX
EFFECTIVE DATE

This ordinance shall take effect thirty days after publication upon adoption.

Note: *This sample ordinance has been written by the Michigan Townships Association Legal Counsel for townships, but the statute discussed applies to cities, villages and townships in the same way. A county cannot adopt an ordinance "opting in" to allow any of the facilities authorized by these statutes.*

A township should consult with its attorney before taking any steps to adopt an ordinance under these statutes, and for specific legal guidance on how PA 281 of 2016 interacts with the individual township's other ordinances, including a zoning ordinance.

Also note that, at the time of this publication (August 28, 2017), the required rules have not yet been adopted the Michigan Department of Licensing and Regulatory Affairs (LARA) regarding the implementation or enforcement of the Michigan Medical Marihuana Facilities Act or the other acts impacting the licensing of medical marijuana facilities. LARA plans to adopt emergency rules prior to the implementation of the Act in December 2017, with more formal rules and procedures being adopted over the next few years. Also, additional legislation and amendments to existing statutes are expected as the MMFLA is implemented. A township board should consult with its attorney for specific legal guidance on the appropriate time for the board to take any action on "opting-in," or any changes that may be needed to accommodate changes in statute, administrative rules or court opinions prior to or during the early implementation of the MMFLA.